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101ST CONGRESS
2d Session

SENATE

REPORT
101-422

PROVIDING FOR THE RELIEF OF CERTAIN PERSONS IN STONE COUNTY, ARKANSAS, DEPRIVED OF PROPERTY AS A RESULT OF A 1973 DEPENDENT RESURVEY BY THE BUREAU OF LAND MANAGEMENT

AUGUST 3 (legislative day, JULY 10), 1990.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2680]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2680) to provide for the relief of certain persons in Stone County, Arkansas, deprived of property as a result of a 1973 dependent resurvey by the Bureau of Land Management, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) certain landowners in Stone County, Arkansas, who own property adjacent to the Ozark National Forest have been adversely affected by certain erroneous surveys;

(2) these landowners have occupied or improved their property in good faith and in reliance on erroneous surveys of their properties that they believed were accurate; and

(3) the 1975 Bureau of Land Management dependent resurvey of the Ozark National Forest correctly established accurate boundaries between such forest and private lands.

(b) PURPOSE.—It is the purpose of this Act to authorize and direct the Secretary of Agriculture to convey, without consideration, certain lands in Stone County, Arkansas, to persons claiming to have been deprived of title to such lands.

SEC. 2. DEFINITIONS.

For the purposes of this Act the term—

(a) "affected lands" means those Federal lands located in the Ozark National Forest in Stone County, Arkansas, in sections 1, 2, 3, 9, 11, and 12, township 15 north, range 12 west, Fifth Principal Meridian, as described by the dependent resurvey by the Bureau of Land Management conducted in 1975, and subsequent Forest Service land line location surveys, including all adjacent parcels

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where the property line as identified by the 1975 BLM dependent resurvey and National Forest boundary lines before such dependent resurvey are not coincident;

(b) "claimant" means an owner of real property in Stone County, Arkansas, located adjacent to the Ozark National Forest lands described in subsection (a), who claims to have been deprived by the United States of title to property as a result of previous erroneous surveys; and

(c) "Secretary" means the Secretary of Agriculture.

SEC. 3. CONVEYANCE OF LANDS.

Notwithstanding any other provision of law, the Secretary is authorized and directed to convey, without consideration, all right, title, and interest of the United States in and to affected lands as described in section 2(a), to any claimant or claimants, upon proper application from such claimant or claimants, as provided in section 4.

SEC. 4. TERMS AND CONDITIONS OF CONVEYANCE.

(a) NOTIFICATION.—No later than two years after the date of enactment of this Act, claimants shall notify the Secretary, through the Forest Supervisor of the Ozark National Forest, in writing of their claim to affected lands. Such claim shall be accompanied by—

(1) a description of the affected lands claimed;

(2) information relating to the claim of ownership of such lands; and

(3) such other information as the Secretary may require.

(b) ISSUANCE OF DEED.—(1) Upon a determination by the Secretary that issuance of a deed for affected lands is consistent with the purpose and requirements of this Act, the Secretary shall issue a quitclaim deed to such claimant for the parcel to be conveyed.

(2) Prior to the issuance of any such deed as provided in paragraph (1), the Secretary shall ensure that—

(A) the parcel or parcels to be conveyed have been surveyed in accordance with the Memorandum of Understanding between the Forest Service and the Bureau of Land Management, dated November 11, 1989; and

(B) all new property lines established by such surveys have been monumented and marked.

(3) The Federal Government shall be responsible for all surveys and property line markings necessary to implement this subsection.

(c) NOTIFICATION TO BLM.—The Secretary shall submit to the Secretary of the Interior an authenticated copy of each deed issued pursuant to this Act no later than thirty days after the date such deed is issued.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

2. Amend the title so as to read: "A bill to provide for the conveyance of lands to certain individuals in Stone County, Arkansas.".

PURPOSE OF THE MEASURE

The purpose of S. 2680, as ordered reported, is to authorize and direct the Secretary of Agriculture to convey, without consideration, all right, title and interest of the United States in approximately 48.5 acres of land to 25 individual owners of lands located adjacent to Ozark National Forest lands in Stone County, Arkansas.

BACKGROUND AND NEED

In 1973, the Bureau of Land Management conducted a dependent resurvey of a portion of township 15 north, range 12 west in Stone County, Arkansas, to determine the property lines for the Ozark National Forest. During the preparation of the survey, the BLM found what it believed to be evidence of the original Government

Land Office (GLO) survey conducted in 1890. This evidence, in the form of a remnant of an original GLO section corner located at the northeast corner of section 12, was located approximately 200 feet from the monument set years before by several private surveyors. These earlier private surveys, as well as a 1935 and 1960 survey conducted by the Forest Service, have been used by the adjacent private landowners and the Forest Service to mark their respective property boundaries in this area for decades.

Although public domain lands in this area were reserved for national forest purposes in 1908, no attempt was made by the United States to locate the original survey corners. The property boundaries existing at the time were accepted as the line between Federal and private lands without further survey. When the Forest Service marked the property lines several decades later, it again relied on the established lines on the ground.

Late last year, the Forest Service, using the 1973 BLM dependent resurvey, finally began to mark its official boundaries based on the BLM resurvey. In the process, the Forest Service identified several encroachments on Federal land by adjoining private landowners. Many of the individual property owners affected by this latest survey (as well as their predecessors and ancestors) have lived on and used these lands for over 70 years. In many instances, generations of the same family have occupied these properties, made improvements, grown crops, and raised livestock. The Forest Service has recognized this problem, but does not have authority to convey these lands for no consideration.

S. 2680, as ordered reported, authorizes and directs the Secretary of Agriculture to convey these disputed lands to the owners of the adjacent property without consideration if the claimants comply with certain requirements specified in the legislation. The Forest Service estimates that a total of approximately 48.5 acres would be conveyed to some 25 landowners. It further estimates that the total value of these lands to be between $7,500 and $8,000.

LEGISLATIVE HISTORY

S. 2680 was introduced by Senator Bumpers on May 23, 1990. Senator Pryor was added as a cosponsor on June 19th. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the measure on June 21, 1990.

At the business meeting on July 25, 1990, the Senate Committee on Energy and Natural Resources ordered S. 2680, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 25, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass S. 2680, if amended as described herein.

The rollcall vote on reporting the measure was 17 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad	
Mr. Heflin	
Mr. McClure	
Mr. Hatfield*	
Mr. Domenici	
Mr. Wallop*	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Garn*	
Mr. McConnell	

*Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of S. 2680, the Committee adopted an amendment in the nature of a substitute and an amendment to the title. The amendment slightly modifies the process by which lands are to be conveyed to incorporate recommendations made to the Committee by the Forest Service.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the Congressional findings and purpose.

Section 2 defines certain terms used in the Act.

Section 3 provides that notwithstanding any other provision of law, the Secretary of Agriculture is authorized and directed to convey all right, title, and interest of the United States in the affected lands described in section 2 of claimants meeting conditions specified in section 4. The Committee notes that the modification of the Ozark National Forest property line description to reflect the 1973 BLM dependent resurvey may possibly affect property descriptions of certain additional lands in Stone County. If in fact these lands are affected by the modification of the forest property line description, it is the Committee's view that the issue should be addressed through State law.

Section 4(a) allows claimants, within 2 years after the date of enactment of this Act, to notify the Secretary in writing of their claim to affected lands. Such notification is to include a description of the affected lands claimed, information relating to the claim of ownership of such lands, along with such other information as the Secretary may require.

Subsection (b) directs the Secretary, upon making a determination that issuance of a deed is consistent with the purpose and requirements of this Act, to issue a quitclaim deed for the affected parcel of land to the claimant. Prior to the issuance of the deed, the Secretary shall ensure that the parcel or parcels to be conveyed have been surveyed in accordance with a 1989 Memorandum of Understanding between the Forest Service and the Bureau of Land Management, and that all new property lines have been monumented and marked. The subsection also makes clear that the Fed-

eral Government is responsible for all surveys and property line markings required for the implementation of this subsection.

Subsection (c) requires the Secretary to submit a copy of each deed issued pursuant to this Act to the Secretary of the Interior, no later than 30 days after the date the deed is issued.

Section 5 authorizes the appropriation of such sums as may be necessary to carry out the purposes of this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 2, 1990.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2680, a bill to provide for the relief of certain persons in Stone County, Arkansas, deprived of property as a result of a 1973 dependent resurvey by the Bureau of Land Management, as ordered reported by the Senate Committee on Energy and Natural Resources, July 25, 1990. We estimate that enactment of this bill would result in no significant cost to the federal government and in no cost to state or local governments.

S. 2680 would direct the Secretary of Agriculture to convey, without consideration, all right, title, and interest in about 48 acres of federal land in Arkansas to anyone who makes a valid claim for the property within two years of the bill's enactment. Information from the Forest Service indicates that the land affected by the bill has an appraised value of less than $8,000. CBO estimates that survey activities carried out as a result of the passage of S. 2680 would cost less than $50,000 in 1991.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2680. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2680, as reported.

EXECUTIVE COMMUNICATIONS

On June 8, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture, the Department of the Interior, and the Office of Management and Budget setting forth executive views on S. 2680. These reports had not been received at the time report on S. 2680 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of Agriculture and the Bureau of Land Management at the Subcommittee hearing follows:

STATEMENT OF LARRY HENSON, ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to offer our views on S. 2680, a bill to convey Federal lands to persons in Stone County, Arkansas.

The bill would authorize and direct the Secretary of Agriculture to convey approximately 48 acres of land to 25 private landowners adjacent to the Ozark National Forest in the town of Fifty-Six, Arkansas. This would resolve boundary issues between Federal and private lands caused by erroneous surveys conducted between 1829 and 1975. We support the purpose of this legislation, but we have serious concerns about the language of the bill as written.

The problem that S. 2680 seeks to correct has a long history. The original surveys were performed in the Fifty-Six area by the Government Land Office (GLO) in 1829. After the surveys were completed, the United States transferred some lands to private individuals under the various laws for disposition of the public domain.

Under the Land Survey Ordinance of 1785, the original Government Land surveys were the basis of describing the location of Federal lands and the location of original United States patents disposing of the land into private ownership.

The 1829 survey corners were monumented with wooden corner posts and bearing trees. A subsequent survey by the Forest Service in 1935 did not locate any original evidence of the GLO survey in certain sections, and relied on monuments set by private surveyors. In 1960, the Forest Service again attempted to mark its boundaries and continued to rely on monuments set by private surveyors.

In 1975, the Bureau of Land Management (BLM) completed a dependent resurvey of sections 1-12, T.15N., R.12W., 5th principal meridian, for the Ozark National Forest. The BLM surveyor found the original GLO corner at the southwest corner of section 12 approximately 200 feet from the monuments set by private surveyors.

Under the Small Tracts Act, the Secretary of Agriculture is authorized to sell, exchange, or interchange National Forest System lands encroached upon by improvments that are occupied and used by people who thought they had title to the land. However, the Small Tracts Act requires payment by the private landowners for the appraised value of the land conveyed.

S. 2860 addresses a special case. Legislation is needed to convey lands to the private landowners for no consideration.

The title of the bill as introduced states that certain persons in Stone County, Arkansas, have been deprived of property. This is not the case. While the boundaries of their properties are in question, the Forest Service has taken no action to remove them from the lands. The language of the bill also states that the resurvey conducted by the Bureau of Land Management in 1975 was in error. The BLM dependent resurvey is accepted by all parties—private and Federal alike.

The bill should be more specific in describing the affected property, the owners who are entitled to relief, and the process to be followed in granting that relief.

The bill should also describe the process by which the adjustments will be accomplished, including the Forest Service responsibility to provide for a survey and to monument and mark the lands to be conveyed.

Mr. Chairman, we are committed to conveying the affected lands to our neighbors in Fifty-Six for no consideration and resolving the Forest Service boundary question. We recommend that the attached substitute bill be enacted in lieu of S. 2680.

I would be pleased to respond to your questions.

SUPPLEMENTAL STATEMENT—U.S. DEPARTMENT OF AGRICULTURE

A Bill In the Nature of a Substitute for S. 2680 To convey certain Federal lands to persons in Stone County, Arkansas, and for other purposes

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds and declares that—

(1) Certain landowners in Stone County, Arkansas, who own property adjacent to the Ozark National Forest, are adversely affected by certain erroneous surveys;

(2) These landowners have occupied and/or improved these lands in good faith and relied on erroneous surveys of their properties that they believed were accurate; and

(3) The Bureau of Land Management dependent resurvey of the Ozark National Forest in 1975 currectly established accurate boundaries between the Forest and private lands.

(b) PURPOSE.—It is the purpose of this Act to authorize and direct the Secretary of Agriculture to make adjustments to the property boundaries of the Ozark National Forest and to convey to the claimants certain lands in the Ozark National Forest.

SECTION 2. CONVEYANCE.

(a) Notwithstanding any other provision of law, and upon proper application from claimants of affected lands described in Section 3 herein, the Secretary of Agriculture is authorized and directed to convey, to such claimants, without consideration, all right, title, and interest of the United States in and to the affected lands described in Section 3(a).

(b) Claimants shall, within two years of the date of enactment of this Act, notify the Secretary of Agriculture through the Forest Supervisor of the Ozark National Forest in writing of their claim to affected lands. Each claim shall be accompanied by:

(1) a description of the affected lands being claimed;

(2) information relating to the claim of ownership of such land; and

(3) such other information as the Secretary of Agriculture may require.

(c) The Secretary of Agriculture shall issue a quitclaim deed to each claimant for the affected lands upon the Secretary's determination that such issuance is consistent with the purpose and requirements of this Act. The Secretary shall include in each such quitclaim deed any terms, convenants, and reservations the Secretary deems necessary to protect the public resources of the Ozark National Forest. Prior to the issuance of such quitclaim deeds the Secretary shall ensure that the parcels to be conveyed:

(1) have been surveyed in accordance with the Memorandum of Understanding, dated November 11, 1989, between the Forest Service and the Bureau of Land Management; and

(2) all new property lines established by such surveys have been monumented and marked.

(d) The Secretary of Agriculture shall submit to the Secretary of the Interior an authenticated copy of each deed issued pursuant to this Act no later than 30 days after such issuance.

SECTION 3. DEFINITIONS.

For the purpose of this Act—

(a) "affected lands" are National Forest lands located in Stone County, Arkansas, in Sections 1, 2, 3, 9, 10, 11, and 12, T.15N., R.12W., 5th principal meridian, as described by the dependent resurvey by the Bureau of Land Management conducted in 1975 and subsequent Forest Service land line location surveys, including all adjacent parcels where the property line as identified by the 1975 BLM dependent resurvey and National Forest boundary lines before the 1975 BLM dependent resurvey are not coincident.

STATEMENT OF JOHN J. MOELLER, DEPUTY ASSISTANT DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to appear here today to present the Department's views on S. 2680.

This bill would require the Secretary of Agriculture to convey, without consideration, certain lands in Stone County, Arkansas, to persons who claim they were deprived of that land by a dependent resurvey by the Bureau of Land Management (BLM).

We defer to the Forest Service on the merits of the bill.

A summary of the bill is attached to this statement.

S. 2680 involves a case in which the BLM conducted field work in 1972 and 1973, and officially approved the dependent resurvey on March 17, 1975. That is the correct resurvey of the lands.

In the cases that are the basis of this legislation, the landowners apparently relied on erroneous survey corners established by private surveyors. This situation became apparent by the BLM 1975 dependent resurvey and subsequent marking of its boundaries by the Forest Service based on that resurvey. The reliance of the landowners on the private surveys led them to believe that they owned the land which, in fact, belongs to the Federal Government. It was

not the dependent resurvey of the Bureau of Land Management that caused the problem. We object to language in the bill, including the title, that infers that the dependent resurvey was the cause of the problem being addressed. In addition, it should not be the basis for relief.

We question the provision in section 1(b)(2) which would authorize the conveyance of those lands if the Secretary determines that the landowners' claims are a result of subsequent Forest Service surveys based on the 1975 BLM resurvey. We are not aware that the Forest Service conducted an official survey based on BLM's 1975 resurvey. Congress has given Federal boundary survey authority only to the BLM which maintains all official records of public land boundary surveys. Giving that authority to other agencies can cause problems because we cannot include in those records, as official surveys, any surveys which are not approved by the BLM as having been conducted in accordance with established criteria.

The BLM and the Forest Service have an existing Memorandum of Agreement which allows surveys and resurveys to be executed by the Forest Service and approved by BLM.

As I mentioned earlier, the title of the bill is misleading because the dependent resurvey did not deprive any landowners of their land. The dependent resurvey delineates the correct boundaries between privately owned land and public land administered by the Forest Service.

We understand a substitute bill will be offered by the Forest Service. We have no objection to this approach since it clarifies the matters discussed in our statement.

This concludes my statement. I will be pleased to answer questions.

SUMMARY OF S. 2680

S. 2680, notwithstanding any other provision of law, would direct the Secretary of Agriculture to convey, without consideration, all right, title, and interest of the United States in and to certain lands in Stone County, Arkansas, to any person claiming to have been deprived of title to such land by the United States. However, conveyance would be authorized only if the Secretary determines that the claimant satisfies the following conditions:

Claimant owns real property adjacent to National Forest System lands in Stone County, Arkansas;

Claim is a result of (1) the dependent resurvey conducted by the Bureau of Land Management of a portion of township 15 north, range 12 west, Stone County, Arkansas, as executed by the BLM in 1973; or (2) subsequent Forest Service surveys based on the 1973 BLM resurvey; and

Claimant submits to the Secretary, not later than 2 years after enactment of this Act, an application for conveyance of title. The application would have to be accompanied by a description of the land to be conveyed, information relating to the claim of ownership of such land, proof of the claimant's residential or agricultural use of such land, and such other information as the Secretary may require.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill, S. 2680, as ordered reported.

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